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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS WELSH, ERIC D. HYP and RICHARD C. SAILE

Appeal 2008-1105
Application 09/935,926
Technology Center 3600

Decided: June 18, 2008

Before: MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI and
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

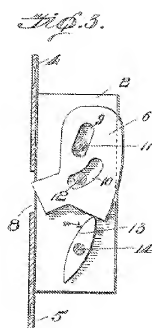
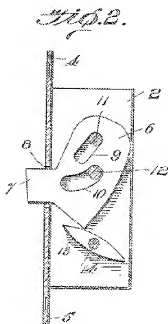
1
2 The Appellants appeal under 35 U.S.C. § 134 (2002) from the final
3 rejection of claims 9-11 under 35 U.S.C. § 102(b) (2002) as being
4 anticipated by Seaman (U.S. Patent 818,303). We have jurisdiction under
5 35 U.S.C § 6(b) (2002).

1 We REVERSE.

2 The claims on appeal relate to a linear compression latch of a type
3 which may be used to latch a door or panel to a frame on which the door or
4 panel is mounted and to seal the edge of the door or panel to the frame when
5 the door or panel is closed. (Spec. 1, ¶ 2). Claim 9, from which appealed
6 claims 10 and 11 depend, reads as follows:

7
8 9. A linear compression latch
9 comprising:
10 a housing;
11 a lever handle rotatable by an operator
12 between a first position and a second position, the
13 lever handle being mounted in the housing;
14 a pawl mounted for substantially
15 linear motion, the pawl being actuated by rotation
16 of the lever handle and traveling substantially
17 linearly between an open position to a closed
18 position as the lever handle is rotated between the
19 first position to second position;
20 wherein the pawl is mounted to travel
21 between the open position along a first path and an
22 intermediate position; and
23 wherein the pawl is mounted to travel
24 in a second path in an upward direction
25 substantially perpendicular to the first path
26 between the intermediate position and the closed
27 position.
28

29 Claims 9-11 stand rejected under 35 U.S.C. § 102(b) (2002) as being
30 anticipated by Seaman (U.S. Patent 818,303). Seaman discloses a sash-
31 fastener. The sash-fastener is illustrated in Figs. 2 and 3 of Seaman which
32 are reproduced below.



The sash-fastener includes a casing with an opening 8; a bolt pivotably supported by two vertically-aligned pins 11 and 12 within the casing; and an elliptical tumbler 13 mounted on a shaft 14 passing through a cheek-plate 2 of the casing for rotation by a user. (Seaman 1, ll. 51-59 and 81-94; Seaman 1, l. 109 – 2, l. 3). Fig. 2 shows the sash-fastener with the back side of the casing cutaway so as to display the configurations of bolt and the elliptical tumbler when the sash-fastener is locked. Fig. 3 shows the sash-fastener with the back side of the casing cutaway so as to display the configurations of the bolt and the elliptical tumbler when the sash-fastener is unlocked. (Seaman 1, ll. 41-44).

The Appellants contend that Seaman fails to disclose a pawl mounted to travel in a second path in an upward direction substantially perpendicular to a first path between an intermediate position and a closed position. (App. Br. 7). The Examiner finds that the pin 12 constrains Seaman's bolt 6 to move relative to the pin along the arc defined by a slot 10 through the bolt.

1 The Examiner also appears to find that the direction in which Seaman's bolt
2 6 moves at some point between the open position shown in Fig. 3 and an
3 intermediate position is "substantially perpendicular" to a direction in which
4 the bolt moves at some point between the intermediate position and the
5 closed position shown in Fig. 2. (Ans. 5-6 and Attachment 1). From these
6 findings, the Examiner concludes that the bolt 6 is mounted so as to travel in
7 the manner recited in the last clause of claim 9.

8 While we agree with the Examiner that the adjective "substantially" is
9 a term of degree (Ans. 4), we cannot ignore the adjective entirely in
10 interpreting the phrase "substantially perpendicular" as used in claim 9. *In*
11 *re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) ["All words in a claim must
12 be considered in judging the patentability of that claim against the prior
13 art."]. Based on our visual inspection of Seaman's bolt 6 as depicted in Figs.
14 2 and 3 of the reference, we do not find under any reasonable interpretation
15 of the phrase "substantially perpendicular" that a tangent to the arc defined
16 by the slot 10 at any point between the end of the slot proximal to the
17 opening 8 (where the pin 12 would lie when the bolt was in open position
18 shown in Fig. 3) and an intermediate position would be substantially
19 perpendicular to any tangent at any point between the intermediate position
20 and the end of the slot distal from the opening 8 (where the pin 12 would lie
21 when the bolt was in the closed position shown in Fig. 2). Without such a
22 finding, we cannot agree with the Examiner's rationale for rejecting claims
23 9-11. No other rationale for sustaining the rejection is apparent from the
24 disclosure of Seaman.

On the record before us, the Appellants have shown that the Examiner
erred in rejecting claims 9-11 under section 102(b) as being anticipated by
Seaman.

DECISION

We REVERSE the Examiner's rejection of claims 9-11.

REVERSED

vsh

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